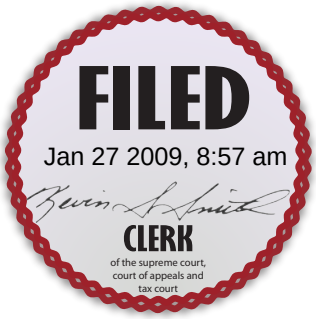

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IN THE
COURT OF APPEALS OF INDIANA

HOWARD HOWE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 27A02-0806-CV-499
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE GRANT SUPERIOR COURT
The Honorable Jeffrey D. Todd, Judge
Cause No. 27D01-0707-IF-157

January 27, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Howard Howe, *pro se*, appeals from a jury verdict against him for speeding, as a class C infraction.[1]

We affirm.

ISSUES

1. Whether the jury's verdict was supported by sufficient evidence.

2. Whether the trial court erred when it denied Howe's motion to exclude the State's sole witness.

3. Whether the State was required to show damages before the jury could enter a monetary judgment against him.

FACTS

On April 12, 2007, at approximately 9:40 a.m., Indiana State Trooper Bill Bradberry[2] was on road patrol in Grant County. From the median of Interstate Highway 69 ("I-69") near the sixty-one and a half mile marker, Trooper Bradberry observed a vehicle that appeared to be traveling in excess of the speed limit. He visually estimated its speed at approximately eighty miles per hour. He activated his radar gun and clocked the vehicle at a speed of seventy-eight miles per hour, eight miles in excess of the posted speed limit of seventy miles per hour.

Trooper Bradberry initiated a traffic stop and asked the driver, Howe, whether he knew how fast he had been driving. Howe responded that he did not. Trooper Bradberry

[1] Indiana Code § 9-21-5-13.

[2] The record contains two spellings of his surname.

then asked Howe whether he knew the speed limit. Howe responded that it was "seventy miles per hour." (Tr. 54). Trooper Bradberry issued a speeding citation as well as a warning for an unsigned vehicle registration.

On June 20, 2007, Howe was tried before the bench in the Gas City Court. During the trial, the State presented the testimony of Trooper Bradberry, and Howe cross-examined him. Thereafter, the Gas City Court found that Howe had committed the class C infraction of speeding. On July 5, 2007, Howe filed a written motion for trial *de novo*, wherein he alleged that he had been denied the opportunity to present a case in chief at the prior hearing. The trial court granted Howe's motion.

The trial court conducted Howe's jury trial on April 10, 2008. When the State called Trooper Bradberry to the witness stand, Howe objected, arguing outside the presence of the jury that Trooper Bradberry should be excluded as a witness because his name did not appear on the State's witness list. Howe argued that had he known that Trooper Bradberry would be testifying, he would have investigated his "veracity, . . . his training on that radar gun an' a number of other things." (Tr. 36). Howe then moved for either a directed verdict or dismissal with prejudice. The trial court overruled his objection and denied his motions, stating that it did not find that Trooper Bradberry's testimony was "gonna serve as any surprise to the defense." (Tr. 42). The jury then heard evidence and argument and, at the close of the evidence, was released to deliberate. It returned a verdict against Howe and imposed a civil penalty of $500.00. Howe now appeals.

Additional facts will be included as necessary.

DECISION

Howe argues that (1) the evidence was insufficient to support the jury's verdict; (2) the State failed to give him notice of the identity of its witness or the evidence it intended to present at trial; and (3) the $500.00 judgment should be overturned because the State "presented no evidence of damages." Howe's Br. at 5.

1. Sufficiency of the Evidence

Howe argues that the State failed to prove an essential element of its case, namely that "the alleged offense occurred outside an urbanized area with a population of at least fifty thousand (persons)." Howe's Br. at 2. We disagree.

Our standard of review for sufficiency of the evidence claims is well settled. We do not reweigh the evidence or judge the credibility of the witness; we only look to determine whether there was sufficient evidence of probative value for the trier of fact to conclude that the defendant was guilty of the charged offense. *Barber v. State*, 863 N.E.2d 1199, 1203 (Ind. Ct. App. 2007), *trans. denied*.

We begin by noting that traffic infractions are civil, rather than criminal in nature, and therefore, the State must prove the commission of the infraction by only a preponderance of the evidence. *Slate v. State*, 798 N.E.2d 510, 520 (Ind. Ct. App. 2007).

In order to prove that Howe was speeding, the State was required to prove that he exceeded the maximum speed limit on an interstate highway. I.C. § 9-21-5-13. Indiana Code section 9-21-5-2 states that the maximum allowable speed on interstate highways

"located outside of an urbanized area with a population of at least fifty thousand" is seventy miles per hour. Stated differently, when traveling on interstate highways that are outside metropolitan areas with populations of at least fifty thousand people, Indiana drivers may not drive at speeds in excess of seventy miles per hour.

The jury was instructed, in relevant part, that

> A person may not drive a vehicle on a highway at a speed in excess of the following maximum limits:
>
> * * * Seventy (70) miles per hour on a highway on a national system of interstate and defense highways located outside an urbanized area with a population of at least fifty thousand (50,000).
>
> The burden of proof is upon the State of Indiana to prove the material allegations of the citation by a preponderance of the evidence whereby you must be convinced from a consideration of all the evidence that the allegations of the State are more probably true than not true.

(Howe's App. 9-10).

We are not persuaded by Howe's contention that the State failed to meet its burden of proof. Our supreme court has previously held that

> [t]he jury can apply its common sense to th[e] record. *See* 12 Robert Lowell Miller, Jr., Indiana Evidence § 201.101 (1995) ("[J]urors are instructed to use their own knowledge, experience and common sense in weighing evidence...."); 27 Charles A. Wright & Victor J. Gold, Federal Practice & Procedure § 6075, at 450 (1990) ("Obviously, no juror can or should approach deliberations with an entirely clean cognitive slate. Humans can make intelligent decisions only by drawing upon their accumulated background knowledge and experience. Jurors are not only permitted to make decisions in this manner, it is expected of them[.]"); *see also Halsema v. State*, 823 N.E.2d 668, 673-74 (Ind. 2005).

Staton v. State, 853 N.E.2d 470, 475 (Ind. 2006). As the State notes, the jurors, as Grant County residents, were in a position to know the speed limit on the stretch of I-69 in question.

The evidence is sufficient to support the jury's finding that Howe committed the charged infraction. The facts reveal that Trooper Bradberry clocked Howe's vehicle moving at seventy-eight miles per hour on Interstate Highway 69 in Grant County. When questioned about the speed limit on that stretch of roadway, Howe correctly indicated that it was seventy miles per hour. Based upon the foregoing facts and the jurors' own "knowledge, experience, and common sense" with respect to their geographic surroundings, they could properly have found that the State met its burden of proof.

2. Notice

Next, Howe argues that the State failed to comply with a court order requiring it to advise him of the identity of its witness and the evidence it intended to introduce; therefore, he argues, it was not entitled to introduce any evidence. This issue is waived.

> 'The trial court must be given wide discretionary latitude in discovery matters since it has the duty to promote the discovery of truth and to guide and control the proceedings, and will be granted deference in assessing what constitutes substantial compliance with discovery orders.' 'Where there has been a failure to comply with discovery procedures, the trial judge is usually in the best position to determine the dictates of fundamental fairness and whether any resulting harm can be eliminated or satisfactorily alleviated.' Unless there is clear error and resulting prejudice, we will not disturb the trial court's determination as to discovery violations.

Kindred v. State, 524 N.E.2d 279, 286-87 (Ind. 1988) (internal citations omitted).

"A continuance is usually the proper remedy when remedial measures are warranted." *Braswell v. State*, 550 N.E.2d 1280, 1283 (Ind. 1990); *Fleming v. State*, 833 N.E.2d 84, 91 (Ind. Ct. App. 2005). A party's "[f]ailure to request a continuance, where a continuance may be an appropriate remedy, constitutes a waiver of any alleged error pertaining to noncompliance with the trial court's discovery order." *Fleming*, 833 N.E.2d at 91. Here, although a continuance would have been the proper remedy, Howe failed to request one; he thereby waived any alleged discovery error.

His waiver notwithstanding, Howe's motion was properly denied. We have previously held that "it is apparent that the legislature intended that legal proceedings for traffic infractions be conducted consistent with the Indiana Rules of Trial Procedure." *Ford v. State*, 650 N.E.2d 737, 739 (Ind. Ct. App. 1995). Indiana Code section 9-30-3-6 sets out the required statutory form for the information and summons for traffic infraction cases. "Substantial compliance with statutory requirements means compliance to the extent necessary to assure the reasonable objectives of the statute are met." *Hamill v. City of Carmel*, 757 N.E.2d 162, 165 (Ind. Ct. App. 2001).

The record reveals that Howe knew the identity of the State's witness because (1) Bradberry issued the citation directly to Howe; (2) the complaint and summons (Exhibit A, Howe's App. 13) bore Trooper Bradberry's signature, officer identification number, and police agency; (3) Howe apparently referred to Trooper Bradberry in a request for admissions prior to the jury trial; and (4) at Howe's first trial, Trooper Bradberry was the State's sole testifying witness and Howe cross-examined him.

The State's complaint and summons complied with the statutory requirements to the extent necessary to give Howe notice as to the identity of the State's witness. Moreover, in light of the procedural history of the matter, it is readily apparent that Howe had notice of Trooper Bradberry's identity and the State's intention to introduce his testimony at trial. We decline his invitation that we reverse the judgment.

3. Damages

Lastly, Howe contends that the State is not entitled to "damages" because it presented no evidence of the same. We disagree.

The State was not required to make a showing of "damages" in order to sustain the jury's imposition of a monetary judgment against Howe. "[T]raffic infractions do not involve 'damages' in the same sense as suits for tortious conduct." *Schumm v. State*, 866 N.E.2d 781, 793 (Ind. Ct. App. 2007). "Although civil in nature, a monetary judgment entered upon a finding of a violation of an infraction is the functional equivalent of a penal fine; the judgment serves to induce compliance with the statute." *Id*. Indiana Code section 34-28-5-4 provides that "[a] judgment of up to five hundred dollars ($500) may be entered for a violation constituting a Class C infraction." Such was the case here.

We find no error from the jury's imposition of the $500.00 civil judgment.

Affirmed.

VAIDIK, J., concurs.

RILEY, J., concurs in result.